

W.Ambrose
IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

MARY E. GLOVER,)	
)	
Plaintiff,)	Civil No. 08-990
v.)	
MARK J. UDREN, UDREN LAW)	District Judge Donetta W. Ambrose
OFFICES, P.C., WELLS FARGO)	Magistrate Judge Robert C. Mitchell
HOME MORTGAGE, GOLDMAN)	
SACHS MORTGAGE COMPANY)	
)	
Defendants.)	

MEMORANDUM AND ORDER

DONETTA W. AMBROSE, United States District Judge.

On April 23, 2014, the magistrate judge entered an Order denying Plaintiff's motion to strike a declaration by Defendant Wells Fargo's Vice President of Loan Documentation, Keaton C. Stoneking. Memo. Order [ECF No. 690]. The motion was denied on the basis that it did not seek to exclude any redundant, immaterial, impertinent or scandalous matter under Federal Rule of Civil Procedure 12(f) and that the arguments raised therein were more appropriately considered evidentiary issues. Plaintiff filed objections arguing that a motion to strike a Rule 56 affidavit and/or declaration was the proper procedure for bringing her motion. Obj. [ECF No. 691]. I find that the magistrate judge's order is neither clearly erroneous nor contrary to law.¹

¹ Plaintiff's use of *In re Unisys Sav. Plan Litigation*, 74 F.3d 420, 437-438 (3d Cir. 1996) is inapplicable as far as the party in that case argued that the court of appeals should not consider an expert report it submitted to the trial court, and the court of appeals declined and held generally that Rule 56 defects are waived when not raised in the district court. Additionally, insofar as Plaintiff invokes an analysis under Rule 56(e), it was not substantively raised prior to her objections and is therefore waived. See *Bell v. City of Harrisburg*, 457 Fed.App'x 164, 167 (3d Cir. 2012); *勞工者國際聯合會 v. Foster Wheeler Corp.*, 26 F.3d 375, 398 (3d Cir. 1994).

Additionally, I find that the declaration is properly considered in determining Defendant's motion for summary judgment. Federal Rule of Civil Procedure 56(c)(4) states that “[a]n affidavit or declaration used to support or oppose a motion must be made on personal knowledge, set out facts that would be admissible in evidence, and show that the affiant or declarant is competent to testify on the matters stated.” Fed. R. Civ. P. 56(c)(4).

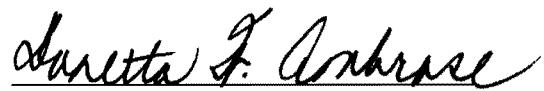
Stoneking's declaration is supported by and cites to record evidence of Plaintiff's note, mortgage, servicing agreements, loan payment history, loan modification agreement, escrow account history, and escrow disclosure statements that are all attached to the declaration, and have previously been submitted as evidence of record. Additionally, Stoneking declares that he is

Vice President of Loan Documentation for Wells Fargo Bank, N.A., successor by merger to Wells Fargo Home Mortgage, Inc. The information contained in this declaration is true and correct to the best of my knowledge, information and belief, and if called to testify regarding the matters addressed herein, I could and would competently do so based both on my personal knowledge and based upon my review of the business records of Wells Fargo Home Mortgage[,] . . . including Plaintiff Mary Glover's loan file. . . . In my capacity as Vice President of Loan Documentation, I have come to know policies, practices, and procedures of Wells Fargo concerning its role as a servicer of residential mortgage loans, and am familiar with the policies and procedures regarding the servicing of residential mortgage loans. In addition, I have reviewed and I am familiar with Plaintiff Mary Glover's loan file.

Declaration of Keaton C. Stoneking ¶¶ 1-2. Therefore, he has personal knowledge of the facts he declares, and is competent under Rule 56(c)(4) and his declaration may be properly considered in determining Defendant's motion for summary judgment. Accordingly, Plaintiff's objections are overruled.

O R D E R

AND NOW, this 24th day of April, 2014, IT IS HEREBY ORDERED that Plaintiff's objections [ECF No. 691] are OVERRULED as neither clearly erroneous nor contrary to law.



The Honorable Donetta W. Ambrose
United States Senior District Judge

cc: all counsel of record via CM/ECF electronic filing